

STATE OF MICHIGAN
COURT OF APPEALS

In re FISHER/WILLIAMS/WILLIAMS-JOHNSON,
Minors.

UNPUBLISHED

April 23, 2020

No. 351036
Wayne Circuit Court
Family Division
LC No. 18-000387-NA

Before: GADOLA, P.J., and STEPHENS and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor children SRF, DLW, KCW, and MJWJ under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist with no reasonable likelihood of rectification), and MCL 712A.19b(3)(g) (parent fails to provide proper care despite financial ability). On appeal, respondent argues the trial court clearly erred in terminating her parental rights because petitioner, the Department of Health and Human Services (DHHS), failed to make reasonable accommodations necessary to assist respondent in completing her service plan. Respondent also argues that the trial court failed to provide clear and convincing evidence of the statutory grounds for termination. We affirm.

I. BACKGROUND

In March 2018, petitioner filed a petition for temporary custody of SRF, DLW, KCW, and MJWJ that alleged the children were at risk of harm in the care of respondent because of environmental neglect, respondent’s substance abuse, and respondent’s mental instability. Child Protective Services (CPS) substantiated several past reports involving respondent regarding medical neglect, physical neglect, and threatened harm. MJWJ was born testing positive for marijuana, and home assessments found respondent’s home to be cluttered with clothing, old food, and trash. There were no beds for the children. During her interactions with CPS, respondent self-reported that she was depressed.

The trial court authorized the petition and petitioner created a service plan for respondent that included psychological and psychiatric evaluations, mental health services, parenting classes, individual therapy, substance abuse therapy, weekly random drug screens, a parenting coach, and

a parent partner. SRF was released to the care of her father in Maryland, while DLW, KCW, and MJWJ were placed in a nonrelative foster home.

Over the next nine months, respondent was substantially out of compliance with her service plan. Respondent completed parenting classes but her visits with the children were chaotic despite assistance from an Infant Mental Health (IMH) therapist who was present during the visits. Ultimately, respondent was terminated from her supportive visitation program and two other parent partner arrangements because she failed to attend or communicate with petitioner's agents. Respondent was evicted and became homeless. She elected not to take petitioner's offers for shelter placement and for assistance in obtaining housing. She consistently missed drug screens. Respondent became pregnant during the proceedings and declined petitioner's assistance in obtaining prenatal care or other support.

Respondent failed to meet her obligations regarding her mental health. Petitioner made two referrals for the psychological evaluation required in the parent agency agreement despite respondent having been offered transportation to the evaluations. Respondent also failed to meet her obligations regarding substance abuse. Petitioner initially was unable to provide respondent financial assistance for substance abuse therapy. In light of that inability, petitioner directed respondent to several free agencies including Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). Respondent did not attend. Once financial support was obtained for individual therapy and substance abuse therapy, respondent nevertheless missed her initial appointment.

A foster case worker who was responsible for respondent's case reported a concern that respondent may have difficulty with comprehension or another cognitive impairment. Respondent's counsel then requested appointment of a guardian ad litem (GAL) for respondent, and the trial court ordered a GAL to be appointed.

In February 2019, petitioner filed a petition for permanent custody of SRF, DLW, KCW, and MJWJ, requesting termination of respondent's parental rights on the basis of MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(c)(ii), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). After the petition was filed, respondent gave birth to another child, NSWJ.

Respondent requested to receive her psychiatric evaluation and attendant services from Team Wellness, a provider with no affiliation with DHHS, on the basis of a friend's recommendation. She was diagnosed with severe depression as a result of the evaluation, but her therapist reported that respondent did not have any cognitive or intellectual delays. Petitioner requested respondent sign a release of information to allow her provider at Team Wellness to share information regarding her treatment, but respondent failed to do so. Petitioner also offered to help respondent switch to a DHHS-affiliated provider with a location closer to respondent's residence, but respondent did not follow up. Consequently, petitioner was unable to obtain information regarding respondent's care at Team Wellness.

Respondent delivered NSWJ subsequent to the filing of the petition for permanent custody and was assigned her third parent partner. Respondent initially refused to allow petitioner into a home respondent shared with her cousin, for a home assessment. When petitioner was permitted entry, the home was found to have only one mattress on the floor in one room, with no other beds for the children. Other than a fold-out table with a few chairs, the home had no additional furniture.

The basement strongly smelled of mold, and had stairs that needed to be fixed. However, there was sufficient food in the refrigerator for the children. Respondent provided proof of her SSI benefits in July of 2019, which established her receipt of \$750 monthly.

A termination hearing was held in July and September 2019. The trial court found that petitioner made reasonable efforts toward reunification over the year and four months in which respondent received services. The trial court engaged in a particular analysis regarding the applicability of *In re Hicks/Brown*, 500 Mich 79, 88-89; 893 NW2d 637 (2017), finding that even though respondent did not have a mental health diagnosis other than severe depression, it was “clear” that respondent had mental health needs (i.e., that she was “slower at grasping some of the concepts”) on the basis of the adjudication and testimony offered by respondent’s father and petitioner. Additionally, the trial court determined that respondent was provided tailored services—including a GAL, parent partner, supportive visitation, and IMH resources—to accommodate her mental health needs. The trial court found clear and convincing evidence of grounds for termination of respondent’s parental rights under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(g), and determined it was in the best interests of SRF, DLW, KCW, and MJWJ to terminate respondent’s parental rights. This appeal ensued.

II. DISCUSSION

Respondent contends petitioner failed to engage in reasonable efforts toward reunification with respondent by failing to provide reasonable accommodations for her mental health needs and alleged cognitive impairment. Respondent additionally argues there was insufficient evidence for the trial court to terminate respondent’s parental rights under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(g).

A. REASONABLE ACCOMMODATIONS

Respondent first argues the trial court plainly erred when it terminated respondent’s parental rights to the children because petitioner failed to make reasonable efforts toward reunification by not providing reasonable accommodations to address respondent’s known severe depression and suspected intellectual disability or cognitive impairment. We disagree.

This issue is unpreserved because respondent failed to object or otherwise indicate that the provided services were somehow inadequate when the services were offered. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). “The time for asserting the need for accommodation in services is when the court adopts a service plan, not at the time of a dispositional hearing to terminate parental rights.” *In re Terry*, 240 Mich App 14, 26-27; 610 NW2d 563 (2000). Respondent did not challenge the adequacy of the services when the service plan was adopted under either a reasonable accommodation or reasonable efforts theory. Furthermore, respondent did not object regarding the services offered throughout the proceedings until the hearing on the petition for permanent custody of SRF, DLW, KCW, and MJWJ.

This Court reviews a trial court’s factual findings and findings regarding reasonable accommodations for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Terry*, 240 Mich App at 22. A trial court’s decision “is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm

conviction that a mistake had been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Unpreserved issues are reviewed for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). “To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). “Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *In re Utrera*, 281 Mich App at 9.

Petitioner “has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights.” *In re Hicks/Brown*, 500 Mich at 85. Part of this requirement to make reasonable efforts is the creation of a service plan, which outlines the steps that petitioner and respondent “will take to rectify the issues that led to court involvement and to achieve reunification.” *Id.* at 85-86, citing MCL 712A.18f(3)(d) (stating that the service plan shall include a “[s]chedule of services to be provided to the parent . . . to facilitate the child’s return to his or her home”). A respondent is obliged to engage in and benefit from the service plan to avoid termination of parental rights: “While [petitioner] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App at 248; see also *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014) (“Not only must respondent cooperate and participate in the services, she must benefit from them.”). When challenging the services offered by petitioner, a respondent must establish that she would have fared better if other services had been offered. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).

“Trial courts are in the best position, in the first instance, to determine whether the steps taken by [petitioner] in individual cases are reasonable.” *In re Hicks/Brown*, 500 Mich at 88 n 6. Here, the trial court found that respondent was provided specific additional supports to aid her in reunification. It found that respondent was provided a GAL and multiple parent partners to assist her during the proceedings. It further found that respondent was provided supportive visitation and IMH resources to assist respondent with learning appropriate parenting skills beyond those offered by a traditional parenting class.

The record further supports that petitioner engaged in extended efforts to evaluate respondent’s mental health status and provide supportive mental health services throughout the initial portion of the proceedings. Respondent was referred for a psychiatric assessment, individual therapy, and substance abuse treatment in May 2018, July 2018, and January 2019. Respondent was required to go to an outside agency and submit the invoice for that treatment through petitioner for her first referral while petitioner investigated its own administrative difficulties in obtaining financial assistance. However, respondent nevertheless received information from petitioner on resources regarding agencies or therapists that could offer respondent individual treatment, including those not affiliated with petitioner offering free therapy-adjacent services (e.g., AA and NA). Respondent did not follow through to complete the intake appointments after the first and second referrals. For her third referral, petitioner agreed to refer respondent to the non-DHHS affiliate Team Wellness, because respondent wanted to work with Team Wellness on the basis of a friend’s recommendation. However, she missed her initial appointment for that referral and was not evaluated until March 2019. Respondent was diagnosed as being depressed but was not found to have significant cognitive deficits. Once in receipt of the Team Wellness psychiatric evaluation report, petitioner acted on the recommendations in the report by discussing the benefits of an

antidepressant medication regimen for respondent's severe depression with respondent and her father. Respondent asserts that she continued therapy with Team Wellness but never authorized the release of those records to petitioner. Respondent does not support her claim that she has a cognitive impairment with any diagnosis or evaluation, but rather on the basis of her father's statement that she is "intellectually slow," and on the claim by foster care worker Alicia Peek that respondent "didn't know what was going on."

Petitioner offered additional and tailored services as part of the service plan in an attempt to accommodate respondent's mental health needs before the petition for permanent custody was filed and continued such offers up until termination. Petitioner provided respondent with four to eight bus passes weekly and offered to set up rideshare services for transportation to services. Respondent was afforded a GAL to assist her. Petitioner communicated with respondent's father about respondent's service plan and methods of achieving compliance with services and attempted to communicate with respondent's sister. In short, the petitioner offered significant resources to address both the known mental health and substance abuse issues, as well as the unsupported cognitive deficits. Respondent was enrolled in a supportive visitation program in July 2018, and an IMH therapist began to supervise respondent's visits in March 2019. Respondent was provided information regarding Michigan Rehabilitation Services and their employment resources for people with disabilities, but respondent did not provide any evidence of her participation in that program. Respondent was also referred for a parent partner on three occasions, but was terminated from the first two parent partnerships as a result of respondent's lack of communication. The parent partner was intended to assist respondent with obtaining furniture, transport respondent to appointments, provide her with resources for obtaining housing, help respondent to be able to drive to different shelters, obtain a printout of her monthly SSI benefits, and assist in filling out any necessary paperwork.

Unlike *In re Hicks/Brown*, respondent did not request any additional or altered services as an accommodation for her mental health needs prior to the termination hearing. *In re Hicks/Brown*, 500 Mich at 89-90. For these reasons, the trial court did not err in finding that petitioner made reasonable efforts toward reunification.

B. SUFFICIENCY OF EVIDENCE FOR STATUTORY GROUNDS

Respondent next argues that there was insufficient evidence for the trial court to find statutory grounds for termination of respondent's parental rights under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(g). We disagree.

We note that while respondent states in her brief on appeal that "sufficient evidence was not presented to terminate [respondent's] parental rights as [respondent] was not provided with a Treatment Plan that had the specialized services that would have successfully accommodated her mental illness and possible cognitive impairment," she provides no analysis regarding the statutory grounds for termination, apart from her argument concerning reasonable efforts and her quotation of the statutory subsections. Respondent's failure to properly brief this issue on appeal constitutes abandonment of the issue. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998), overruled on other grounds by *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000), superseded in part by statute on other grounds as recognized in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

Regardless, there was sufficient support in the record for the trial court's determination that statutory grounds for termination had been proven.

This Court reviews "for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich at 152. After a trial court finds that a statutory basis for termination exists by clear and convincing evidence and that a preponderance of the evidence shows that "termination of parental rights is in the best interests of a child, the court must terminate the respondent's parental rights to that child." *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). A trial court's decision "is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake had been made." *In re JK*, 468 Mich at 209-210.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(g), which state:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

There was clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(c)(i). The initial conditions of adjudication included respondent's mental health and substance abuse issues, as well as an unfit home. As stated previously, respondent did not pursue petitioner's referrals for substance abuse and mental health treatment, and delayed seeking evaluation and treatment at the provider of her choice until almost 10 months after the initial referrals. No evidence of respondent's attendance at, or possible benefit derived from treatment was available to the trial court, because respondent did not release this information despite repeated requests to provide proof of her treatment. Additionally, respondent's mental health remained an issue because she continued to demonstrate unsafe parenting skills at visits with the children, even after having completed parenting classes. Substance abuse remained an

issue because only five drug screens were completed out of at least 40 drug screens required. Inappropriate housing was also still an issue where a home assessment just days before the termination hearing revealed respondent had no furniture for the children, save one bed on the floor in one room. Considering that the four children had been under the care of petitioner for approximately one year when the petition for permanent custody was filed, and many of the concerns remained as of the termination hearing 16 months after the initial adjudication, it was not error for the trial court to find that respondent was not reasonably likely to rectify these issues within a reasonable time.

For analogous reasons, there was clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(g). Respondent's failure to benefit from the services offered is evidence that respondent could not provide proper care or custody for SRF, DLW, KCW, and MJWJ. See *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) ("A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody."). Concerns existed regarding respondent's ability to parent the children safely, despite petitioner's attempts to provide services over approximately 16 months, including: individual therapy, substance abuse treatment, a supportive visitation program, presence of an IMH therapist during visits, and three referrals for parent partners. Respondent's discontinuance of her medication regimen, delay in seeking individual therapy, and failure to provide supportive documentation of her individual and substance abuse therapy suggested a lack of benefit from individual therapy. The trial court also took particular notice of respondent's father's testimony that it was unclear how long it would take for respondent to be able to safely parent the children, and it was unlikely that reunification would be possible within a reasonable timeframe. Although the trial court did not explicitly consider respondent's financial ability to provide proper care and custody, evidence indicated that respondent received \$750 monthly in SSI benefits at the time of finding clear and convincing evidence of grounds for termination of parental rights. Respondent's ability to support the children with this monthly balance was not challenged. Accordingly, there was sufficient evidence to terminate respondent's parental rights to the children under MCL 712A.19b(3)(g).

Affirmed.

/s/ Michael F. Gadola
/s/ Cynthia Diane Stephens
/s/ Douglas B. Shapiro